100TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 100-312
Part 2

TAX TREATMENT OF INDIAN FISHING RIGHTS INCOME

JUNE 15, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 2792 which on June 25, 1987, was referred jointly to the Committee on Ways and Means and the Committee on Interior and Insular Affairs]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2792) to clarify Indian treaties, Executive orders, and Acts of Congress with respect to Indian fishing rights, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. FEDERAL TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS SECURED BY TREATY, ETC.

(a) GENERAL RULES.—Subchapter C of chapter 80 of the Internal Revenue Code of 1986 (relating to provisions affecting more than 1 subtitle) is amended by adding at the end thereof the following new section:

"SEC. 7873. INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.

"(a) IN GENERAL.—

"(1) INCOME AND SELF-EMPLOYMENT TAXES.—No tax shall be imposed by subtitle A on income derived—

"(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

"(B) by a qualified Indian entity, from a fishing rights-related activity of such tribe.

"(2) EMPLOYMENT TAXES.—No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

"(b) DEFINITIONS.—For purposes of this section—

"(1) FISHING RIGHTS-RELATED ACTIVITY.—The term 'fishing rights-related activity' means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

H783-3

"(2) RECOGNIZED FISHING RIGHTS.—The term 'recognized fishing rights' means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

"(3) QUALIFIED INDIAN ENTITY.—

"(A) IN GENERAL.—The term 'qualified Indian entity' means, with respect to an Indian tribe, any entity if—

"(i) such entity is engaged in a fishing rights-related activity of such tribe,

"(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

"(iii) in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of 1 or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

"(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

"(B) QUALIFIED INDIAN TRIBE.—For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

"(c) SPECIAL RULES.—

"(1) DISTRIBUTIONS FROM QUALIFIED INDIAN ENTITY.—For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a menber of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

"(2) DE MINIMIS UNRELATED AMOUNTS MAY BE EXCLUDED.—If, but for this paragraph, all but a de minimis amount—

"(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

"(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph.

"(3) RELATIONSHIP OF SECTION TO TREATIES, ETC.—Provisions securing any fishing right for any Indian tribe in any treaty, law, or executive order shall not be construed to provide an exemption from any tax imposed by this title."

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter C is amended by adding at the end thereof the following new item:

"Sec. 7873. Income derived by Indians from exercise of fishing rights."

SEC. 2. STATE TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS SECURED BY TREATY, ETC.

Section 2079 of the Revised Statutes (25 U.S.C. 71) is amended by adding at the end thereof the following new sentence: "Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of the Internal Revenue Code of 1986 does not permit a like Federal tax to be imposed on such income."

SEC. 3. CONFORMING AMENDMENTS RELATING TO COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.

(a) EXCLUSION FROM WAGES OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.—Section 209 of the Social Security Act (42 U.S.C. 409) is amneded—

(1) in subsection (r), by striking "or" at the end;

(2) in subsection (s), by striking the period and inserting "; or"; and

(3) by inserting after subsection (s) the following new subsection:

"(t) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights)."

(b) EXCLUSION FROM NET EARNINGS FROM SELF-EMPLOYMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.—Section 211(a) of such Act (42 U.S.C. 411(a)) is amended—

(1) in paragraph (12), by striking "and" at the end;

(2) in paragraph (13), by striking the period and inserting "; and"; and

(3) by inserting after paragraph (13) the following new paragraph:

"(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights)."

(c) CROSS-REFERENCES IN SECA AND FICA TO APPLICABLE INDIAN FISHING RIGHTS PROVISIONS.—

(1) SECA.—Subsection (a) of section 1402 of the Internal Revenue Code of 1986 (relating to net earnings from self-employment) is amended by striking "and" at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting "; and", and by inserting after paragraph (14) the following new paragraph:

"(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply."

(2) FICA.—Subsection (a) of section 3121 of such Code (relating to wages) is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by inserting after paragraph (20) the following new paragraph:

"(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights)."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply to all periods beginning before, on, or after the date of the enactment of this Act.

I. SUMMARY AND LEGISLATIVE BACKGROUND

A. Summary

Present law

Various treaties, Federal statutes, and executive orders reserve to Indian tribes (mostly in the West and Great Lakes regions) rights to fish for subsistence and commercial purposes both on and off reservations. Because the treaties, statutes, and executive orders were adopted before passage of the Federal income tax, they do not specifically address whether income derived by Indians from protected fishing activities is exempt from taxation.

Indians generally are subject to Federal income tax like other U.S. citizens, absent a specific Federal exemption. Consequently, the Tax Court has ruled in three cases that income derived by Indians from protected fishing activities is taxable, and the Internal Revenue Service has assessed deficiencies in other cases.

Committee amendment

On June 9, 1988, the Committee on Ways and Means ordered favorably reported H.R. 2792, with an amendment in the nature of a substitute.

As amended, H.R. 2792 would clarify application of the income tax laws to income derived by certain Indians and Indian-owned entities from the exercise of fishing rights protected by treaties, acts of Congress, or executive orders. Such income would not be subject to Federal, State, or local income taxes, including social security taxes. Income of individual Indians and qualified Indian entities would be tax exempt to the extent it was derived from the exercise of rights granted the tribe of which (1) the individual was a member or (2) the owners of the entity were members. Both individual tribal members and qualified Indian entities would be required to allocate income and expenses among fishing rights-related activities and other activities.

B. Legislative Background

H.R. 2792 was jointly referred to the Committee on Interior and Insular Affairs and the Committee on Ways and Means. The bill was favorably reported by the Committee on Interior and Insular Affairs on September 21, 1987 (H. Rept. 100-312, Part I). The Subcommittee on Select Revenue Measures of the Committee on Ways and Means held a hearing on H.R. 2792 on December 14, 1987, and favorably reported the bill, with an amendment, to the full Committee on Ways and Means on March 17, 1988.

II. EXPLANATION OF H.R. 2792 AS AMENDED BY THE COMMITTEE ON WAYS AND MEANS

Present Law

In ordinary matters not governed by treaties or remedial legislation, Indians are subject to the payment of Federal income taxes as are other citizens.[1] But in some situations, specific provisions in treaties or statutes have been construed to exclude from Federal taxation certain income derived from Indian lands held in trust by the United States.[2] Income derived by Indians from individual or tribal-owned property has, in other situations, been held to be subject to Federal income tax.[3]

Questions have been raised whether a special tax rule should apply to income earned by members of certain Indian tribes from the exercise of fishing rights guaranteed by treaties, Federal statutes, and executive orders. The treaties at issue, most of which were entered into the latter half of the 19th Century before adoption of the 16th Amendment pursuant to which the Federal income tax is imposed, generally secure to Indians who had relinquished all rights to large areas of land (mostly in the West and Great Lakes regions) the exclusive rights to fish on reservation property and the shared rights to fish off-reservation property at "all usual and accustomed grounds and stations." [4]

The fishing rights reserved to Indians include the right to fish for subsistence as well as for commercial purposes. In addition, certain hunting, gathering, and grazing activities are also secured to Indians by treaties, Federal statutes, and excutive orders.[5]

The treaties, Federal statutes, and executive orders that reserve fishing rights to Indians do not contain provisions that specifically

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[1] Indians and their property are exempt from State taxation within their reservations, unless Congress clearly manifests its consent to such taxation. See, *Montana* v. *Blackfeet Tribe of Indians,* 471 U.S. 759 (1985); *McClanahan* v. *Arizona State Tax Comm'n,* 411 U.S. 164 (1973). In contrast, property and income earned outside the reservation have been held to be subject to State taxation, unless Federal law otherwise provides for an exemption. See, *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973).

[2] See, *Squire* v. *Capoeman,* 351 U.S. 1 (1956) (holding that gains from sale of timber on lands allotted to noncompetent Indians but held in trust by the United States pursuant to the General Allotment Act of 1887 was exempt from Federal income taxes).

[3] See, *Choteau* v. *Burnet,* 283 U.S. 691 (1931) (income of competent Indian, who had unrestricted control over lands, held to be subject to tax); *Superintendent of Five Civilized Tribes* v. *Comm'r,* 295 U.S. 418 (1935) (income derived from reinvestment of surplus income from land held to be subject to tax). See *also, Fry* v. *Comm'r,* 557 F.2d 646 (9th Cir. 1977) (taxing income from logging operation on reservation land); and *United States* v. *Anderson,* 625 F.2d 910 (9th Cir. 1980) (taxing income from cattle ranching on reservation land).

[4] See, *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assoc.,* 443 U.S. 658, 662 (1979). Some of these treaties secure to Indian tribes the opportunity to catch up to 50 percent of the harvestable numbers of fish passing through their traditional fishing areas. *Id.* at 685.

[5] See, *Antoine* v. *Washington,* 420 U.S. 194 (1975); *Mattz* v. *Arnett,* 412 U.S. 481 (1973).

Since 1871, when Congress prohibited further treaty making with Indian tribes, the usual method of dealing with Indian tribes and establishing reservations has been either by statute, executive order, or agreement later approved by an Act of Congress. See, H. Rpt. 100–312, Part 1, at p. 2.

address the issue of Federal income taxation of Indian fishing activities. Consequently, the Tax Court has ruled in three cases that income derived by Indians from protected fishing activities is taxable,[6] and the Internal Revenue Service has assessed deficiencies in other cases.[7]

Reasons for Change

In view of the unique relationship between the Federal Government and Indian tribes, the committee believes it is appropriate to provide an exemption from Federal and State taxes for income derived by a member of an Indian tribe, or certain entities owned by members of the tribe, from the exercise of fishing rights guaranteed the tribe by treaty, Federal statute, or executive order.

Explanation of Provisions

H.R. 2792, as amended and ordered reported by the committee, provides that income derived by individual members of Indian tribes, or by a qualified Indian entity, from fishing rights-related activity is exempt from Federal and State income taxes.

Federal tax issues (secs. 1 and 3 of the bill, as amended, new sec. 7873 of the Code, secs. 1402(a) and 3121(a) of the Code, and secs. 209 and 211(a) of the Social Security Act)

In the case of a self-employed member of an Indian tribe having protected fishing rights, the bill provides that income earned by that individual from fishing rights-related activity is exempt from Federal income taxes and from Federal social security (SECA) tax. Income earned by a corporation, partnership, or other business entity from fishing rights-related activity also is exempt from Federal income taxes if the entity constitutes a "qualified Indian entity," as defined in the bill.[8] Wages to a tribal member employed by another tribal member or by a qualified Indian entity from income derived from fishing rights-related activity are exempt from Federal income taxes, from both the employers' and employees' share of social security (FICA) tax, and from unemployment compensation (FUTA) taxes.[9] Wages are not exempt from tax under the bill if paid by an employer who is not a tribal member or qualified Indian entity, or if paid to an employee who is not a tribal member.

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[6] See, *Peterson Estate* v. *Comm'r*, 90 T.C. No. 18 (February 11, 1988); *Earl* v. *Comm'r*, 78 T.C. 1014 (1982); *Strom* v. *Comm'r*, 6 T.C. 621 (1946), *aff'd per curiam*, 158 F. 2d 520 (9th Cir. 1947). Prior to the most recent Tax Court decision, however, the Department of Interior had taken the position that treaty or statutory language that reserves fishing rights to Indians precludes Federal taxation of income derived from the exercise of those rights, because otherwise the tax, in essence, would be a charge imposed upon Indians for exercising their fishing rights that was not contemplated at the time the rights were reserved. See, memorandum from Frank K. Richardson, Solicitor for the Department of Interior, to the Secretary of the Interior, dated March 12, 1985.

[7] In a letter to Senator Daniel J. Evans (R., Washington), dated May 12, 1987, the IRS stated that it will not pursue collection of tax on income derived by Indians from the exercise of protected fishing rights pending consideration of legislation to exempt that income.

[8] The exemption from tax applies to direct income received by a taxpayer as well as to distributions with respect to an equity interest in a qualified Indian entity to the extent the distribution is attributable to income derived by the entity from fishing rights-related activity.

[9] Exemption of FICA (and SECA) and FUTA taxes has the corallary effect that the wages (and income) are not taken into account in computing social security benefits and unemployment compensation.

Definition of fishing rights-related activity

The term "fishing rights-related activity" is defined to include any activity directly related to harvesting (including aquaculture), processing, or transporting fish harvested in the exercise of fishing rights quaranteed by treaty, Federal statute, or executive order,[10] or the selling of such fish, provided that substantially all of the harvesting of such fish was performed by members of the tribe granted such fishing rights. Thus, only Indian tribes guaranteed fishing rights are included within the scope of the bill, and only members of a tribe may exercise the fishing rights held by that tribe and be eligible for an exemption from tax on income derived therefrom.[11]

Qualified Indian entity

In order to be a "qualified Indian entity," the bill requires that: (1) all of the equity interests in the entity be owned by tribal members;[12] (2) substantially all of the management functions of the entity be performed by tribal members; and (3) if the entity engages in any substantial processing or transporting of fish,[13] at least 90 percent of the annual gross receipts of the entity be derived from the exercise of protected fishing rights.[14] In addition, for purposes of determining when income earned as an employee is tax exempt, an entity with respect to which an Indian tribal government exercising its fishing rights satisfies the ownership and management tests is treated as a qualified Indian entity.

A qualified Indian entity may be jointly owned by members of more thn one Indian tribe, provided that the entity is engaged in fishing rights related activity of each tribe of which the owners are members. If a jointly owned entity engages in substantial processing or transporting of fish, at least 90 percent of the annual gross receipts must be derived from fishing-rights related activities of tribes whose members own at least 10 percent equity interests in the entity.

An entity that fails to satisfy any of the criteria of a qualified Indian entity is not eligible for the exemption from tax provided by thg bill, nor is any employee of such an entity eligible under the bill for tax exemption on wages received from such entity. For example, if an entity receives more than 10 percent of its gross receipts in a taxable year from processing fish not harvested by tribal members exercising protected fishing rights, then the entity

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[10] Only fishing rights secured as of March 17, 1988, by a treaty, Federal statute, or executive order are covered by the exemption provided for by the bill. Although the fishing right must have been in existence as of March 17, 1988, it need not have been formally adjudicated or recognized as of that date.

[11] The committee intends that the rules for determining tribal membership not be expanded significantly by tribes to encompass individuals who do not qualify as tribal members under rules in effect on March 17, 1988.

[12] Ownership of interests by spouses of tribal members is disregarded for this purpose.

[13] In this context, "transporting" means the shipment of fish for profit as a separate commercial activity and not the mere carrying of fish from waters where they are harvested to the point of sale or processing.

[14] While the determination whether an entity is a qualified Indian entity normally is made on a yearly basis, the committee intends that the Treasury Department may continue to treat entities as qualified Indian entities under the bill in a year in which the 90-percent test is not satisfied solely by reason of extraordinary and nonrecurring events, such as the sale of a boat or other property.

does not constitute a "qualified Indian entity" for that year, and the entity's income and wages and distributions paid by the entity are not entitled to exemption under the bill. In contrast, if an entity processes fish but 90 percent or more of its annual gross receipts is attributable to fish harvested by tribal members exercising protected fishing rights, then, provided that the entity meets the ownership and management tests, the entity would constitute a qualified Indian entity for that year.

If an entity that is 100 percent owned and managed by tribal members engages solely in harvesting (and selling) of fish, then the entity would be a qualified Indian entity, regardless of the percentage of its annual gross receipts attributable to fish not harvested through the exercise of protected fishing rights. (As with entities engaged in processing or transporting fish, such an entity's income is tax exempt, however, only to the extent it is derived from fishing rights-related activities, as determined pursuant to the allocation rules discussed below.)

Allocation rules

In the case of an individual tribal member or a qualified Indian entity, the bill exempts from income, social security, and other taxes, only that income "derived" from fishing rights-related activities. Thus, both individual tribal members and qualified Indian entities are required under the bill to allocate income and expenses among fishing rights-related activities and all other activities.[15]

If, for example, an individual tribal members derives 60 percent of his or her gross income in a taxable year from fishing in protected waters and the remaining 40 percent of his or her gross income from fishing outside of protected waters, then 60 percent of the member's income would be exempt from tax under the bill, and any expense (e.g., operating expenses or depreciation) attributable to such exempt income could not be used to offset gross income derived from fishing outside protected waters or any other income.[16]

Allocation rules also would apply to income earned, and wages paid, by a qualified Indian entity. Thus, a 100-percent Indian owned and managed entity that engages solely in harvesting and selling the fish it harvests or that engages in processing (or transporting) fish and obtains at least 90 percent of its annual gross receipts from fishing rights-related activities, would constitute a qualified Indian entity, but would be entitled under the bill to an exemption from tax only with respect to income attributable to harvesting or processing of fish caught in protected waters by tribal members. Expenses and amounts otherwise deductible that are attributable to such exempt income of the entity could not be used to offset any other income of the entity.

In the case of qualified Indian entities that are jointly owned by members of more than one tribe, wages paid to a tribal member who is an employee (or a distribution made to a shareholder who is a tribal member) would be exempt under the bill only to the extent

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[15] However, allocations between exempt and taxable income would not be required where all but a *de minimus* amount of the income of the individual or entity was derived from protected fishing activities.

[16] See, Code section 265.

the income was derived from the exercise of fishing rights of the employee's or owner's tribe. For example, if a qualified Indian entity were jointly owned by members of Tribe A and members of Tribe B, then the entity's income would be exempt to the extent it was derived from the exercise of fishing rights-related activities of Tribe A or Tribe B, but wages (or dividends) paid to an employee (or owner) who is a member of Tribe A would be tax-exempt to that individual only to the extent derived from the exercise of fishing rights guaranteed to Tribe A. Income derived from the exercise of fishing rights guranteed to Tribe B (or from fishing activities not within the scope of a treaty, Federal statute, or executive order) would not be exempt when paid as wages (or a dividend) to a member of Tribe A.

The committee intends that the Treasury Department may adopt regulations providing any reasonable method for allocating wages paid to a tribal member employed by another tribal member or by a qualified Indian entity between wages attributable to the employer's income derived from fishing rights-related activity and wages attributable to other activities. The allocation method could be based, e.g., on the particular activities engaged in by each individual employee or on the employee's pro rata share of the employer's gross income from fishing rights-related activity. Some of these rules should address the extent to which income of owners and employees of entities jointly owned by members of more than one tribe is allocable to the exercise of fishing rights of each of the tribes whose members own or are employed by the entity.

Relationship of bill's provisions to treaties

Income of tribal members and qualified Indian entities derived from the exercise of protected fishing rights is exempt from Federal tax only to the extent provided for in the bill. The bill further provides that provisions securing any fishing right for any Indian tribe in any treaty, Federal statute, or executive order shall not be construed to provide an exemption from Federal tax.

H.R. 2792 governs only the tax treatment of income derived from the exercise of fishing rights guaranteed by treaties, Federal statutes, or executive orders, and no inference is made that income derived from any other activity guaranteed to Indian tribes by treaties, Federal statutes, or executive orders (e.g., hunting, gathering, or grazing activities) is exempt from taxation.[17]

State tax issues (sec. 2 of the bill, as amended, and 25 U.S.C. 71)

The bill also amends the United States Code (28 U.S.C. 71) to provide that treaties, Federal statutes, and executive orders under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit imposition under State or local law of any tax on income derived from the exercise of such rights to fish if the income is exempt from tax under Federal law. However, to the extent that the exercise of fishing rights of any Indian tribe is entitled to a broader exemption from State taxes under any other Fed-

[17] The bill does not affect the income of a tribal government received pursuant to the exercise of an essential governmental function. (See, Code sections 115 and 7871, and Rev. Rul. 67-284, 1967-2 C.B. 55, 58).

eral or State law, the committee intends that the bill not impair this additional protection afforded Indian fishing activity.[18]

Effective Date

The amendments made by the bill apply to all taxable years beginning before or after the date of enactment. Thus, only taxes with respect to which the period of limitations for assessment has not expired are governed by the bill. However, the committee intends that all tax disputes currently in litigation either before the Internal Revenue Service or before a court, as well as requests or actions for tax refunds not time barred, will be governed by the provisions of the bill, and that no amount of tax, penalty, or addition to tax will be collected from a taxpayer (regardless of whether the period of limitations for assessing a deficiency has expired) to the extent the underlying deficiency is attributable to income derived from fishing rights-related activity that is exempt from tax under the provisions of the bill.

[18] For instance, income earned by Indians from activities undertaken on a reservation generally are exempt from State taxation. Thus, income earned by an Indian or Indian-owned entity from harvesting or processing fish within reservation boundaries would be exempt from State taxation, regardless of whether the requirements of the bill for exemption from Federal tax are satisfied.

III. BUDGET EFFECTS

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effect on the budget of the committee amendment to the bill (H.R. 2792).

The bill as amended by the committee is estimated to reduce fiscal year budget receipts by $8 million annually for 1988–1992.

IV. VOTE OF THE COMMITTEE AND OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

A. Vote of the Committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the committee on the motion to report the bill (H.R. 2792). The bill as amended was ordered favorably reported by voice vote.

B. Other Matters

In compliance with clause 2(l)(3) and 2(l)(4) of Rule XI of the House of Representatives, the following statements are made with respect to the committee action on the bill.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee (and subcommittee) review of the tax treatment of income from Indian fishing rights that the committee concluded that it is appropriate to enact the provisions of the bill as amended by the committee, in order to clarify and delineate the tax treatment of certain Indian fishing rights.

The Subcommittee on Select Revenue Matters of the Committee on Ways and Means held a hearing on H.R. 2792 on December 14, 1987, and approved the bill with an amendment on March 17, 1988. On June 9, 1988, the Committee on Ways and Means marked up the bill and ordered the bill favorably reported with an amendment in the nature of a substitute.

H.R. 2792 was jointly referred to the Committee on Interior and Insular Affairs and the Committee on Ways and Means. The bill was favorably reported by the Committee on Interior and Insular Affairs on September 21, 1987 (H. Rpt. 100–312, Part 1).

Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), the committee states that the changes made by the bill as reported involve increased tax expenditures of $8 million per year for fiscal years 1988–1992.

Budget Authority

With respect to subdivision (B) of clause 2(l)(3), the committee states that the changes made by the bill as reported involve no new budget authority.

Congressional Budget Office estimate

With respect to subdivision (C) of clause 2(l)(3), the committee states that a statement has not been received from the Congressional Budget Office.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted by the Committee on Government Operations regarding the subject matter of the bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the bill as amended is not expected to increase costs or prices in the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 2792, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

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CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

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SEC. 1402. DEFINITIONS.

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1)

* * * * * * *

(13) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services; [and]

(14) in the case of church employee income, the special rules of subsection (j)(1) shall apply[.]; *and*

(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply.

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Subtitle C—Employment Taxes

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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Subchapter C—General Provisions

SEC. 3121. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) * * *

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(19) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119; [or]

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132[.], *or*

(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights).

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Subtitle F—Procedure and Administration

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CHAPTER 80—GENERAL RULES

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Subchapter C—Provisions Affecting More Than One Subtitle

Sec.
7871. Indian tribal governments treated as States for certain purposes.
7872. Treatment of loans with below-market interest rates.
7873. Income derived by Indians from exercise of fishing rights.

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SEC. 7873. INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.

(a) IN GENERAL.—

(1) INCOME AND SELF-EMPLOYMENT TAXES.—No tax shall be imposed by subtitle A on income derived—

(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

(B) by a qualified Indian entity, from a fishing rights-related activity of such tribe.

(2) EMPLOYMENT TAXES.—No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

(b) DEFINITIONS.—For purposes of this section—

(1) FISHING RIGHTS-RELATED ACTIVITY.—The term "fishing rights-related activity" means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

(2) RECOGNIZED FISHING RIGHTS.—The term "recognized fishing rights" means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

(3) QUALIFIED INDIAN ENTITY.—

(A) IN GENERAL.—The term "qualified Indian entity" means, with respect to an Indian tribe, any entity if—

(i) such entity is engaged in a fishing rights-related activity of such tribe,

(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

(iii) in the case of an entity which engages to any extent in any subtantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of 1 or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

(B) QUALIFIED INDIAN TRIBE.—For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

(c) SPECIAL RULES.—

(1) DISTRIBUTIONS FROM QUALIFIED INDIAN ENTITY.—For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

(2) DE MINIMIS UNRELATED AMOUNTS MAY BE EXCLUDED.—If, but for this paragraph, all but a de minimis amount—

(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph.

(2) RELATIONSHIP OF SECTION TO TREATIES, ETC.—Provisions securing any fishing right for any Indian tribe in any treaty, law, or Executive order shall not be construed to provide an exemption from any tax imposed by this title.

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SECTION 2079 OF THE REVISED STATUTES

SEC. 2079. No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired. *Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of the Internal Revenue Code of 1986 does not permit a like Federal tax to be imposed on such income.*

SOCIAL SECURITY ACT

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TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

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DEFINITION OF WAGES

SEC. 209. For the purposes of this title, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(a) * * *

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(r) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1954; [or]

(s) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132 of the Internal Revenue Code of 1954[.]; *or*

(t) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercising of fishing rights).

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SELF-EMPLOYMENT

SEC. 211. For the purposes of this title—

Net Earnings From Self-Employment

(a) The term "net earnings from self-employment" means the gross income, as computed under subtitle A of the Internal Revenue Code of 1954, derived by an individual from any trade or business carried on by such individual, less the deduction allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) * * *

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(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1954 to that partner for services actually rendered to or behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services; [and]

(13) In the case of church employee income, the special rules of subsection (i)(1) shall apply[.]; *and*

(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights).

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